



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300

July 18, 2005

REGISTERED MAIL  
RB 253 008 386 US

Mr. Elie Kassab  
Prestige Development  
801 C Street, Suite 200  
Vancouver, WA 98660

RE: Water Quality Certification Order Number 2575 for Corps Public Notice No. 200401192 to fill 1.14 acres of wetlands to construct a retail/commercial center and associated facilities in the City of Battle Ground, Clark County, Washington

Dear Mr. Kassab:

The public notice issued by U.S. Army Corps of Engineers on December 1, 2004 for proposed work in wetlands within the City of Battle Ground, Clark County, Washington has been reviewed. On behalf of the State of Washington, we certify that the work proposed in the application for Department of Army permit, and the Corps public notice complies with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

- This certification is subject to the conditions contained in the enclosed Order.

If you have any questions, please contact Lori Ochoa at (360) 407-6926. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Paula Ehlers, Section Manager  
Southwest Regional Office  
Shorelands and Environmental Assistance Program

PE:LO:th  
Enclosure

cc: Ron Klump, U.S. Army Corps of Engineers  
Michael Lamprecht, U.S. Army Corps of Engineers  
Bruce Henderson, Henderson Land Services LLC  
Brian Carrico, Community Development Director, City of Battle Ground



**IN THE MATTER OF GRANTING ) ORDER #2575**  
**A WATER QUALITY ) (Corps No. 2004001192)**  
**CERTIFICATION TO ) Fill 1.14 acres of wetlands to construct a Retail/Commercial**  
Prestige Development ) Center in Battle Ground, Clark County, Washington  
in accordance with 33 U.S.C. 1341 )  
FWPCA § 401, RCW 90.48.260, )  
RCW 90.48.120 and WAC 173-201A )

TO: Mr. Elie Kassab  
Prestige Development  
801 C Street, Suite 200  
Vancouver, WA 98660

ATTN: Mr. Kassab:

On December 1, 2004, a public notice for a proposed water quality certification from the State of Washington was distributed for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA § 401). The proposed project involves placement of fill in wetlands adjacent to an unnamed tributary of Woodin Creek, east of Highway 503 at Battleground, in Clark County, Washington. Total wetland impacts are 1.14 acres.

The purpose of this project is to construct a retail/commercial center that would include a health and fitness center, a retail building, associated parking lots, access roads, storm water detention ponds, and the extension of Scotton Way.

Mitigation for impacts include 0.49 acres of wetland creation, 4.32 acres of onsite wetland enhancement and implementation of the *Compensatory Wetland Mitigation Plan, Health and Fitness Center*, revised November 4, 2004, subsequent revisions dated March 3, 2005 and March 30, 2005 and the revised drawings dated June 27, 2005.

For purposes of this Order, the term "Applicant" shall mean Prestige Development and its agents, assigns, and contractors.

#### **AUTHORITIES:**

In exercising authority under 33 U.S.C. 1341, 16 U.S.C. 1456, RCW 90.48.120 and RCW 90.48.260, Ecology has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and,
3. Conformance with the provision of using all known, available, and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

## **WATER QUALITY CERTIFICATION CONDITIONS:**

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW and Chapter 173-201A WAC, certification is granted to Prestige Development (Applicant) subject to the following conditions:

### **A. No Further Impairment of Existing Water Quality**

- A1. Woodin Creek is a Class A water of the state. Certification of this proposal does not authorize the Applicant to exceed applicable state water quality standards (173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the Applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.
- A2. The applicant shall be in compliance with the most current Stormwater Construction permits issued for this project.

### **B. Timing:**

- B1. This Order is valid until all compliance requirements in this document have been met.

### **C. Notification Conditions:**

- C1. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator (Lori Ochoa) at 360/ 407-6926, Fax 360/ 407-0284, E-mail [loch461@ecy.wa.gov](mailto:loch461@ecy.wa.gov), or mail P.O. Box 47775, Olympia, WA 98504-7775 at least fourteen (14) days prior to the starting work.
- C2. The Applicant shall notify Ecology's Southwest Regional Office Federal Permit Coordinator within fourteen (14) days after completion of construction.
- C3. The Applicant shall ensure that all appropriate project engineers and contractors at the project and mitigation sites shall have read and understand relevant conditions of this Order and all permits, approvals, and documents referenced in this Order. The Applicant shall provide Ecology a signed statement (see Attachment #A for an example) from each project engineer and contractor that they have read and understand the conditions of this Order and the above-referenced permits, plans, documents and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the project site.

**NOTE:** These notifications shall include the applicant's name, project name, project location, the number of this Order, contact and contact's phone number.

**D. Construction Activity Conditions**

- D1. Prior to clearing and grading in wetlands, the adjacent stream and wetlands shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled.
- D2. The project site shall be clearly marked/staked prior to construction. Clearing limits, travel corridors and stockpile sites shall be clearly marked. Equipment shall enter and operate only within delineated clearing limits, corridors, and stockpile areas.
- D3. Work in or near waters of the state shall be done in a manner that minimizes turbidity, erosion, and other water quality impacts.
- D4. Erosion control devices (e.g., hay bales, detention areas, filter fences, etc.) suitable to prevent exceedances of state water quality standards shall be in place before starting project construction and shall be maintained through construction.
- D5. Periodic inspection and maintenance of all erosion control structures shall be conducted no less than every 7 days from the start of the project to site stabilization. Additional inspections shall be conducted prior to and after expected rainfall events to ensure erosion control measures are in good working condition. Any damaged structures shall be immediately repaired. If it is determined at the inspection that additional measures are needed to control stormwater and erosion, they shall be implemented immediately.
- D6. All construction debris shall be properly disposed of on land so that it cannot cause water quality degradation to state waters.
- D7. All excess excavated material shall be disposed of above the 100-year floodplain and shall be contained so as to prevent its re-entry into waters of the state.
- D8. At the completion of construction, hydroseeding may be done to stabilize slopes and soils until other required planting is completed. Hydroseed mix shall consist of native, non-invasive, or annual plant species only.
- D9. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall not be discharged into state waters except as authorized by an NPDES or state waste discharge permit.

**E. Mitigation**

- E1. Project mitigation shall be constructed and maintained as described in the mitigation plan, *Compensatory Mitigation Plan, Health and Fitness Center*, revised November 4, 2004, subsequent revisions dated March 3, 2005 and March 30, 2005 and the revised drawings, dated June 27, 2005.
- E2. The property owner shall grant Ecology access to the mitigation areas for inspection during the 10 year monitoring period or until mitigation success has been achieved.
- E3. Prior to implementing any contingency measures not identified within the mitigation plan referenced in E.1., the applicant must consult with the permitting agencies for further direction.

- E4. Contingency measures and additional monitoring of the mitigation may be required by Ecology if wetland monitoring and/or compliance inspections reveal that performance measures are not being met.
- E5. Any changes to the mitigation plan or monitoring requirements must be approved by Ecology before they are incorporated into the plan or implemented on the ground.

**F. Reporting Conditions**

- F1. A detailed "as built" report shall be prepared after construction showing any variances from the final mitigation plan. The "as-built" shall be the baseline document used for all future monitoring of the mitigation project. It shall include but not be limited to:
  - comments from a wetland specialist present on site during mitigation construction;
  - final site plan showing site topography (both site plan view and typical sections) and clearly indicating the mitigation site boundary;
  - photographs of the area taken from permanent photo points which will be designated on the site plan;
  - the installed planting scheme showing densities, sizes, and approximate locations of plants as well as plant sources and time of planting; and,
  - an analysis of any changes to the mitigation plan that occurred during construction.

A copy of the "as-built" report and drawing shall be sent to Ecology's Southwest Regional Office Attn.: Mark Cline at P.O. Box 47775, Olympia, WA 98504-7775, within 60 days of completing construction and planting, and in no case later than December 31, 2006.

- F2. Mitigation monitoring reports shall be submitted to Ecology by December 1 of each monitoring year for years 1,2,3,5,7 and 10 as described in the mitigation plan, *Compensatory Mitigation Plan, Health and Fitness Center*, revised November 4, 2004, subsequent revisions dated March 3, 2005 and March 30, 2005 and the revised drawings, dated June 27, 2005.

**G. Emergency/Contingency Measures:**

- G1. Any in-water work that is out of compliance with the provisions of this Order, or any discharge of oil, fuel, or chemicals into state waters, including wetlands, or onto land with a potential for entry into state waters, is prohibited. If these occur, the operator shall immediately take the following actions:
  - G1a. Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
  - G1b. Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-hour spill response team at (360) 407-6300, and within 24 hours to Ecology's Southwest Regional Office Permit Coordinator at (360) 407-6926.
  - G1c. Submit a written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the Applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- G2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters, including wetlands.
- G3. If at any time during work the proponent finds buried chemical containers, such as drums, or any unusual conditions indicating disposal of chemicals, the proponent shall immediately notify Ecology's Southwest Regional Spill Response Office at 360 407-6300.

#### **H. General Conditions:**

- H1. This Order does not authorize direct, indirect, permanent, or temporary impacts to waters of the state or related aquatic resources **except** as specifically provided for in conditions of this Order.
- H2. This Order does not exempt the Applicant from, and is conditioned upon compliance with, other statutes and codes administered by federal, state, and local agencies.
- H3. The Applicant shall construct and operate the project in a manner consistent with the project description contained in the *Compensatory Mitigation Plan, Health and Fitness Center*, revised November 4, 2004, revised drawings, dated June 27, 2005 and subsequent revisions dated March 3, 2005 and March 30, 2005, or as otherwise approved by Ecology.
- H4. The Applicant shall provide access to the project site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- H5. Copies of this Order and all related permits, approvals, and documents shall be kept on the project site and readily available for reference by the project managers, construction managers and foremen, other employees and contractors of the Applicant, and state agency personnel.
- H6. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.
- H7. Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

#### **Appeal Process:**

Any person aggrieved by Order #2575 may obtain review thereof by appeal. Pursuant to Ch. 43.21B. RCW, a person can appeal this order to the Pollution Control Hearings Board within 30 days of the date of receipt of this Order. Any such appeal must be sent to the Washington Pollution Control Hearings Board, PO Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, Attn: Loree' Randall, PO

Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 7.18.05 at Lacey, Washington

A handwritten signature in cursive script, appearing to read "Paula Ehlers", written over a horizontal line.

Paula Ehlers, Section Supervisor  
Shorelands and Environmental Assistance Program  
Department of Ecology – Southwest Regional Office

Attachment # A  
Water Quality Certification, Order # 2575  
Statement of Understanding

I, \_\_\_\_\_, state that, I will be involved as an agent or contractor for Prestige Development, in the construction of a retail commercial center. The construction will include a fitness center, retail building, associated parking lots, access roads, storm water detention ponds, and the extension of Scotton Way. I further state that I have read and understand the relevant conditions of Washington Department of Ecology Water Quality Certification Order #2575 and the applicable permits and approvals referenced therein which pertain to the project-related work for which I am responsible.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company